

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 36469

IN THE MATTER OF THE WRIT OF)	
HABEAS CORPUS.)	
MARVIN DEE HEDGER,)	2009 Unpublished Opinion No. 718
)	
Petitioner-Appellant,)	Filed: December 10, 2009
)	
v.)	Stephen W. Kenyon, Clerk
)	
OLIVIA CRAVEN, Executive Director for)	THIS IS AN UNPUBLISHED
Idaho Department of Pardons and Parole, all)	OPINION AND SHALL NOT
previous Board Members and Current Board)	BE CITED AS AUTHORITY
Members, JOANNA SMITH, WARDEN,)	
ISCI, et al.,)	
)	
Defendant-Respondent.)	
)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Daniel C. Hurlbutt, District Judge.

Order dismissing petition for writ of habeas corpus, affirmed.

Marvin D. Hedger, Boise, pro se appellant.

Hon. Lawrence G. Wasden, Attorney General; Krista L. Howard, Deputy Attorney General, Boise, for respondent.

LANSING, Chief Judge

Marvin Dee Hedger, currently incarcerated, filed a pro se petition for writ of habeas corpus challenging the administration of his sentences. On appeal from the dismissal of his petition by the district court, he argues that his sentences are being administered contrary to law, that because of this illegal administration his equal protection rights are being violated, and that he was denied access to the courts.

I.

BACKGROUND

Hedger was incarcerated in 1987 to serve two concurrent sentences, a thirty-year sentence with fifteen years determinate for rape and a twenty-year sentence with ten years

determinate for kidnapping. In 1990, Hedger escaped from custody. Upon pleading guilty to escape, he received a five-year sentence with two years fixed, to be served consecutive to his other sentences. After serving the first seventeen years on his sentences (the fifteen-year determinate portion of the concurrent sentences plus the two-year determinate portion of his escape sentence), he was placed on parole in June of 2004. Following a violation of parole, however, Hedger was taken back into custody in May of 2005. He is currently serving the fifteen-year indeterminate portion of his initial sentences and is scheduled to begin serving the indeterminate portion of his escape sentence after the completion of these fifteen years in 2020.

Hedger filed a pro se petition for writ of habeas corpus in November of 2008 and an augmentation to the petition in February of 2009. In those two documents, Hedger alleged that his sentences were being administered unlawfully. He contended that he was entitled to be discharged from incarceration because all of his sentences had been served and/or commuted. The district court dismissed the habeas corpus petition, finding Hedger's legal analysis to be in error. Hedger appeals.

II.

DISCUSSION

A. Administration of Hedger's Sentence

A petition for a writ of habeas corpus may be dismissed if it fails to state a claim upon which relief can be granted. Idaho Code § 19-4209. The Idaho Supreme Court has held that the decision whether to issue a writ of habeas corpus is within the discretion of the trial court. *Quinlan v. Idaho Comm'n for Pardons and Parole*, 138 Idaho 726, 729, 69 P.3d 146, 149 (2003); *Johnson v. State*, 85 Idaho 123, 127, 376 P.2d 704, 706 (1962). When we review such an exercise of discretion, we conduct a three-tiered inquiry to determine whether the lower court rightly perceived the issue as one of discretion, acted within the boundaries of such discretion, and reached its decision by an exercise of reason. *Quinlan*, 138 Idaho at 729, 69 P.3d at 149; *Gibson v. Bennett*, 141 Idaho 270, 273, 108 P.3d 417, 420 (Ct. App. 2005); *Brennan v. State*, 122 Idaho 911, 914, 841 P.2d 441, 444 (Ct. App. 1992). As we understand Hedger's argument on appeal, he contends that because Idaho Code § 18-2505 requires that a sentence for escape run consecutively to the underlying sentence that was being served when the escape occurred, when he was allowed to begin serving the two-year determinate portion of his escape sentence after having served only the determinate portion of his underlying sentences, the indeterminate terms

of the underlying sentences must have been “discharged” or “commuted.” On this premise, he contends that when he was placed on parole, the indeterminate sentence that remained to be served if his parole was revoked was only the indeterminate portion of the escape sentence--three years.

Hedger’s argument misapprehends the structure for service of consecutive sentences under Idaho law. The sentencing court may generally direct that multiple sentences be served either concurrently or consecutively. I.C. § 19-2513. However, when a defendant has been convicted of escape, the term of imprisonment for that offense “shall commence at the time he would otherwise have been discharged.” I.C. § 18-2505. That is, the escape sentence must be consecutive to any underlying sentence(s) that the defendant was serving at the time of the escape. *Doan v. State*, 132 Idaho 796, 800-03, 979 P.2d 1154, 1158-61 (1999); *Fullmer v. Collard*, 143 Idaho 171, 172, 139 P.3d 773, 774 (Ct. App. 2006). When consecutive sentences have been imposed for multiple offenses, with a fixed and an indeterminate term in each sentence, the fixed terms are served sequentially and the indeterminate terms then follow sequentially, during which indeterminate terms the prisoner may be released on parole. *Doan*, 132 Idaho at 800, 979 P.2d at 1158.

Hedger’s sentences have been administered in accordance with this methodology. He served the fixed fifteen-year term for his underlying concurrent sentences, then the two-year fixed term for his consecutive escape sentence; and he was then placed on parole. At that time, all of his consecutive, indeterminate terms remained to be served if parole were revoked.

The basis for Hedger’s argument that the indeterminate portion of his rape and kidnapping sentences was discharged or commuted is based upon the provision of I.C. § 18-2505 that an escape sentence “shall commence at the time [the defendant] would otherwise have been discharged.” Hedger argues that this must mean that when he was allowed to begin serving the fixed term of his escape sentence, the balance of his underlying sentences had been “discharged.” This argument is without merit, for the Idaho Supreme Court made clear in *Doan* that a sentence for escape is treated like any other consecutive sentence and that the term “discharge” in the statute does not mean that both the fixed and indeterminate portions of the underlying sentence must be completed before service of the escape sentence can begin. *Doan*, 132 Idaho at 800-03, 979 P.2d at 1158-61. The district court correctly held that upon revocation of his parole, Hedger remained subject to service of the balance of his consecutive indeterminate terms.

Hedger also contends that because his sentences are allegedly being administered contrary to law, he has received disparate treatment in violation of the Equal Protection Clause of the United States Constitution. However, we have found that Hedger's sentences are being administered in compliance with Idaho law. Hedger therefore is not being treated differently from those similarly situated and so fails to state an equal protection claim.

B. Access to Courts

Hedger also argues that he was denied his constitutional right of access to the courts because the Idaho Department of Correction has "removed all of its law libraries" and has only "the resource center." Hedger contends this "resource center" is inadequate because it does not house sufficient legal materials to allow him to access the cases the State cites in support of its arguments. Hedger also asserts the resource center's staff member only copies and mails documents and cannot provide legal assistance.

Prisoners have a constitutional right of access to the courts, guaranteed by the Fourteenth Amendment, for purposes of challenging their convictions, sentences, or the conditions of their confinement. *Lewis v. Casey*, 518 U.S. 343, 355 (1996); *Bounds v. Smith*, 430 U.S. 817, 821 (1977); *Drennon v. Hales*, 138 Idaho 850, 853, 70 P.3d 688, 691 (Ct. App. 2003). According to the *Lewis* decision, this right of access is "a right to bring to court a grievance that the inmate wishe[s] to present," but does not require a system that would "enable the prisoner to *discover* grievances [or] to *litigate effectively* once in court." *Lewis*, 518 U.S. at 354 (emphasis in original).

In *Bounds*, the United States Supreme Court held that the right of access "requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law." *Bounds*, 430 U.S. at 828. However, in its subsequent *Lewis* decision, the Court clarified that law libraries and legal assistance are not the right at issue in and of themselves. Rather, the right is one of meaningful access. *Lewis*, 518 U.S. at 350-51. In order to possess standing to bring an access to the courts claim, an inmate must suffer an actual injury from the denial of access. Actual injury means frustration or impediment in pursuing a nonfrivolous legal claim, not simply the lack of law libraries or legal assistance. *Id.* at 349-51, 352-53. *See also Drennon*, 138 Idaho at 853, 70 P.3d at 691. The United States Supreme Court explained the necessity that the claim be nonfrivolous:

Depriving someone of an arguable (though not yet established) claim inflicts actual injury because it deprives him of something of value--arguable claims are settled, bought, and sold. Depriving someone of a frivolous claim, on the other hand, deprives him of nothing at all, except perhaps the punishment of Federal Rule of Civil Procedure 11 sanctions.

Lewis, 518 U.S. at 353 n.3. Thus, an inmate must demonstrate that he was impeded in the pursuit of a claim that had at least arguable merit, although he need not show the claim would have ultimately prevailed. *Drennon*, 138 Idaho at 853-54, 70 P.3d at 691-92.

In this case, because Hedger's claim regarding the administration of his sentence plainly is frivolous, we do not need to address any alleged deficiencies in the library or legal assistance available to him, or whether any alleged deficiencies actually impeded or frustrated his attempt to file his claim. Having sustained no actual injury, Hedger has no standing to bring a claim of denial of access to the courts.

III.

CONCLUSION

Because Hedger failed to state a constitutional claim upon which relief could be granted and lacks standing to bring an access to courts claim, the district court did not abuse its discretion in dismissing Hedger's habeas corpus petition. The order of dismissal is affirmed.

Judge GRATTON and Judge MELANSON **CONCUR.**